Internal Revenue Service

Number: **201435004**
Release Date: 8/29/2014

Index Number: 9100.22-00, 1272.05-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-113018-14

Date:
May 23, 2014

Legend:
Taxpayer =

Bank =

State A =
Accountant 1 =
Accountant 2 =

Dear :

This is in reply to a letter dated March 24, 2014, requesting on behalf of Taxpayer and its wholly-owned subsidiary, Bank, an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make elections under section 1.1272-3 of the Income Tax Regulations to treat all interest on its credit card receivables acquired during the taxable years ended December 31, 2009 and December 31, 2010 as original issue discount ("OID").

FACTS

Taxpayer is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Bank is a Federal Deposit Insurance Corporation insured, special purpose State A state-chartered bank.

Bank issues credit cards to consumers who use the credit cards to borrow funds from Bank to purchase goods and services from merchants. Bank earns various types of fee income with respect to its credit card loans ("the Credit Card Fee Income"). The Credit Card Fee Income includes stated finance charges that apply under the cardholder agreement when cardholders pay less than their full balance by the payment due date. Taxpayer represents that the Credit Card Fee Income has been treated by the Internal Revenue Service ("the Service") as interest for federal income tax purposes.

In Taxpayer's timely filed 2008 return, Taxpayer treated all interest on Bank's credit card receivables acquired in 2008 as OID pursuant to an election under section 1.1272-3 and properly attached the election statement required by section 1.1272-3(d) to the 2008 return. In Taxpayer's timely filed 2009 and 2010 returns, Taxpayer treated all interest on Bank's credit card receivables acquired in each year as OID, however, the election statement required by section 1.1272-3(d) was inadvertently not attached to either the 2009 or 2010 return.

In August 2009, Taxpayer engaged Accountant 1 to assist with its section 1.1272-3 election. Among other things, Accountant 1 prepared a memorandum ("the Account 1 Memorandum") advising that the election statement must be attached to each return for the debt instruments issued in that year.

Taxpayer's 2008 return was prepared by Accountant 2. Taxpayer informed Accountant 2 that it wished to make a section 1.1272-3 election and provided Accountant 2 with a copy of the Accountant 1 Memorandum. Accountant 2 properly attached the election statement required by section 1.1272-3(d) to the 2008 return. In addition, an employee of Accountant 2 directed a subordinate to record an electronic note to the file indicating that the section 1.1272-3(d) election must be made every year.

When Accountant 2 filed Taxpayer's 2009 return, employees of Accountant 2 inquired as to whether the section 1.1272-3(d) election statement needed to be filed each year and erroneously concluded that it did not. The 2009 return was filed without an election statement but the Credit Card Fee Income was treated as OID. Similarly, Accountant 2 filed Taxpayer's 2010 return treating the Credit Card Fee Income as OID but did not attach the election statement to the 2010 return.

In reviewing the final draft of the 2011 return, an employee of Accountant 2 noticed there was no section 1.1272-3(d) election statement attached to the return. That employee contacted a tax manager with Taxpayer and asked whether the election statement was required annually. The tax manager contacted an employee of Accountant 1 who said the election only needed to be attached to the original return. Subsequently, an employee of Accountant 2 discovered a note in an old file indicating that a section 1.1272-3(d) election statement had to be attached to each year's return, not just the original return for the first election year. The necessity of filing an election statement each year was confirmed by Accountant 1 and Taxpayer was advised to seek 9100 relief.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Taxpayer intended to attach the election statement required under section 1.1272-3(d) to its 2009 and 2010 returns and computed its consolidated taxable income for each such year as if the election statement had been attached to the 2009 and 2010 returns.

LAW AND ANALYSIS

Under section 1.1272-3(a) a holder of a debt instrument may elect to include in gross income all interest that accrues on the instrument by using the constant yield method. Under section 1.1272-3(d), a holder makes the election by attaching to the holder's timely filed Federal income tax return a statement that the holder is making an election under this section and that identifies the debt instruments subject to the election.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies

than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. The special rules in sections 301.9100-3(c)(2)(i) through (iv), however, do not apply to an election under section 1.1272-3(a). The election does not require advance written consent of the Commissioner, and does not require an adjustment under section 481(a). Furthermore, the election does not permit a change from an impermissible method of accounting and does not provide a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayer has shown good cause for granting a reasonable extension of time to make an election under section 1.1272-3(a). We further conclude that the time for filing the election under section 1.1272-3(a) is extended to the date that is 60 calendar days from the date of this letter.

This ruling is limited to the timeliness of the filing of Taxpayer's election under section 1.1272(a). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein.

No opinion is expressed with regard to whether the tax liability of Taxpayer is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above. Specifically, no opinion is expressed as to whether the Credit Card Fee Income is properly characterized as interest for federal income tax purposes.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)